the parties in the present case are akin to this. In fact the position of the plaintiffs is stronger because they are authorised to carry on business as bankers. I therefore find that there is no merit to the contention that the transactions were a guise for money-lending. There is little need for me to deal with other minor points that have been raised. I find that they too have no merits.

Appeal is dismissed with costs.

Order accordingly.

Solicitors: *John Ang & Co.; T.S. Chong & Co.*

TAN SWEE HOE CO. LTD. v. ALI HUSSAIN BROS.

[O.C.J. (Syed Othman F.J.) September 30, 1978]
[Johor Bahru — Civil Suit No. 228 of 1971]

Landlord and Tenant — Claim by landlords of vacant possession — Premises not controlled premises — Allegation that rent in arrears — Tenant alleging payment of tea-money — Whether equity created enabling tenant to occupy the premises for as long as he paid rent regularly — Maximum term ninety-nine years — National Land Code, s. 221.

The plaintiffs, the landlords of the premises, claimed vacant possession of the premises and alleged that the defendants, the tenants, were in arrears of rent. Notice to quit had been given. The premises were not rent controlled. The defendants alleged that they had paid the sum of $14,000 to the landlords and claimed that they were entitled to occupy the premises for as long as they wished on payment of rent regularly. They also alleged that the plaintiffs had refused to accept the arrears of rent. The learned trial judge found as a fact that the defendants had paid the sum of $14,000 to the plaintiffs.

Held: (1) as the defendants had paid tea-money to the plaintiffs, and as the payment was induced and encouraged by the plaintiffs in that the defendants would be allowed to remain in occupation for as long as they desired on payment of the monthly rent, an equity had been created and the defendants were entitled to occupy the premises for a term of years to be determined, provided they observed the conditions;

(2) the tenancy in this case was for the whole premises and the maximum period of the lease under section 221(3)(a) was 99 years;

(3) considering the equity that had been created and the differences between the parties over the current rent, which could easily be remedied, the notice by the plaintiffs terminating the tenancy was of no effect;

(4) in this case the correct monthly rent brought about by the increase in assessment was $293.40.

Cases referred to:-

(1) *Lee Ah Low* v. *Cheong Lep Keen & Anor.* [1970] 1 M.L.J. 7.

(2) *Yong Tong Hong v. Siew Soon Wah & Ors.* [1971] 2 M.L.J. 105.

(3) *Inwards* v. *Baker* [1965] 2 W.L.R. 212, 213.

CIVIL SUIT.

Thara Singh for the plaintiffs.

S.V.K. Singham for the defendants.

Cur. Adv. Vult.

Syed Othman F.J.: I must apologise for the delay in delivering this judgment. I have already informed counsel for both sides the reasons.

The plaintiffs claim vacant possession of a shop-house, No. 11, Jalan Dato Teoh Siew Khor, Kluang, arrears of rent, mesne profits and damages.

The statement of claim says that by an agreement dated October 1, 1967 the plaintiffs let to the defendants the shop-house on monthly tenancy at the rental of $254; the plaintiffs determined the tenancy by serving on the defendants a notice dated October 24, 1970 to quit the premises on November 30, 1970; the defendants have not vacated the premises; they are in arrears of rent from April 1970 to November 1970 at $254 per mensem, amounting to $2,032.

In defence, the defendants say that the plaintiffs had refused to accept the arrears of rent, and that in consideration of the defendants having paid the plaintiffs the sum of $14,000 on July 18, 1957, the plaintiffs granted the defendants tenancy of the premises for as long as the defendants wished on payment of rent regularly. By way of counterclaim, the defendants ask the plaintiffs be ordered to execute a valid registrable lease for the residue of the headlease less one day; alternatively the defendants seek payment by the plaintiffs the sum of $64,000 as damages for breach of contract.

It is common ground that the premises are not rent controlled.

At the commencement of the trial the parties agreed that there was a 1967 agreement as stated by the plaintiffs; and since the defendants relied on the 1957 agreement contending that the 1967 agreement was not valid, the general onus of proof shifts to the defendants and the defendants have the right to begin.

The main evidence for the defendants as given by DW1, a partner of the firm, is as follows: In 1957 DW1 asked Jamaluddin (DW2), a shop assistant, to look for vacant premises. Jamaluddin afterwards told him that the present premises would be let if tea-money of $14,000 was paid. He and two other partners saw Tan Thin Puan, the father of the representative of the plaintiffs in court, and a director of the company. Tan Thin Puan told him that the tea-money could not be reduced; that there could be no subletting without permission; other conditions would be imposed. After some negotiation, the $14,000 was paid. Tan Kim Seck, representative of the plaintiffs in court, who issued the receipt for the first month's rent told him that no receipt for the $14,000 could be issued, to save accounting to the Income Tax Department. DW2 was present when the tea-money was paid. Tan Thin Puan told them that they could stay on the premises as long as they wished. In 1961 the parties entered into a written agreement whereby the rent was increased from $200 to $220 per mensem. In 1967 they entered into another written agreement increasing rent from $220 to $254 per mensem. In substance all the written agreements are about the same. After the 1967 agreement there was dispute as to the correct rent. The solicitors for the plaintiffs as per letter, AB17, dated December 20, 1968 told the defendants in effect that as the assessment on the premises had been increased, the rent on the premises was increased by $10. The defendants did not agree to the increase; they pointed

out that as the assessment had only been increased from $349.70 in 1968 to $403.50 in 1969, they would be willing to pay the difference, i.e. $53.80. The plaintiffs replied as per letter, AB19 dated January 23, 1969 referring to paragraph 7 of the tenancy agreement, which reads "in the event of any increase in the Town Council assessment, quit rent and other taxes relevant to the premises, the rental shall be increased proportionately in accordance with the increase levied by the Government or the Authorities".; this paragraph, they contend, does not show that the increase should be proportionate; they could increase the rent either twice or even 10 times. The defendants' solicitors, as per their letter, AB20, of January 25, 1969, maintained that with the increase of assessment by $53.80 per year the monthly rent increase was $4.50 and forwarded a sum to meet the increase according to their calculations. The plaintiffs' solicitors then gave the defendants notice to quit as per letter, AB22. The defendants' solicitors, as per letter, AB23, of July 14, 1969, disputed the plaintiffs' right to give the notice to quit and said that as the plaintiffs had received tea-money there was a tenancy for an indefinite period.

The defendants' assessment of damages at $64,000 is based on tea-money that has been paid, $14,000, cost of converting the premises at $4,000, items purchased such as refrigerator, cupboards and tables valued at $12,700 and cost of looking for alternative place, $32,000.

In adducing their case the plaintiffs' side relies on the evidence of Tan Kim Seck, their representative and at present the executive director and manager of the company. His evidence is that the premises was first rented out to the defendants in 1957; the first receipt issued shows the conditions of the tenancy on the obverse side. There is little need to set them out. In 1967 another agreement was entered. There are some changes but generally it can be said that the conditions are about the same as in the receipt. The two agreements are more a matter of form rather than substance. For the purpose of the case, I need only set down paragraphs 7, 8 and 9 which read as follows:

"7. In the event of any increase in the Town Council assessment, quit rent and other taxes relevant to the premises the rental shall be increased proportionately in accordance with the increase levied by the Government or the Authorities.

8. At least one month's written notice must be given to the landlords for the termination of tenancy failing which one month's rental shall be payable in lieu of notice.

9. In the event of the tenants failing to observe any of the above terms and conditions the landlords reserve the right to take the necessary actions against the Tenants."

Considering the pleadings, evidence and arguments on both sides, the questions which I have to determine are:

(1) whether the defendants did pay the $14,000 and, if so, what was the intention of the parties as regards the duration of the tenancy;

(2) whether it was in the contemplation of the parties that the tenancy was terminable at a month's notice by either side;

(3) what was the correct amount of monthly rent having regard to the express term that the rent was to be increased proportionally with the increase in the assessment and terms as stated in paragraph 7 of the 1967 agreement.

I find that the defendants have adduced overwhelming evidence to show that the $14,000 was paid. The plaintiffs' evidence is a mere denial. The father, Tan Thin Puan, is not called to give evidence. Considering the circumstances prevailing at the time, I am satisfied that the defendants did pay and the plaintiffs did receive the $14,000 in consideration of which the plaintiffs gave an undertaking that the defendants could occupy the premises for as long as they wished, subject to the conditions stipulated, and, particularly, so long as the defendants paid rent as agreed and the rent was to be increased proportionately with the increase in assessment. The question now is, was there any intention to create a lease for a term of years to be determined as claimed by the defendants. The defendants' side say there was, in view of the payment of the tea-money, and the period must be proportionate to the cost of the property in relation to the total period of 99 years as allowed by the National Land Code. In substance, section 221 of the National Land Code allows the proprietor of any alienated land to grant lease of the whole or any part for a term exceeding 3 years; the maximum term for which such lease may be granted shall be 99 years if it relates to the whole. Here there is no dispute that the matter relates to the whole land.

Both sides referred to *Lee Ah Low* v. *Cheong Lep Keen & Anor.*[1] and *Yong Tong Hong* v. *Siew Soon Wah & Ors.*[2] The facts in these cases are somewhat different from the present case. In the first case, certain premises had been let by a person to the appellant for a term of 80 years on a monthly rental of $100. The agreement was not by deed nor was it registered. The appellant went into occupation and paid the monthly rent. Subsequently the land was sold to the respondent who then gave a notice to quit. The Federal Court, by a majority, agreed with the trial judge that the appellant held the land under a tenancy which had been effectively put to an end by the notice to quit.

In the second case, the appellant had expended money on the land of another in the expectation of being allowed to remain in occupation and an agreement was drawn to the effect that the tenancy was to endure as long as the tenant wished to occupy and from this there was no uncertainty in the minds of the parties as to the period of the lease. The Federal Court in allowing the appeal held that "the court would give effect to the expressed intention of the parties by holding that the agreement was one for the grant of as long a lease as the law allows which, under the provisions of section 221(3)(b) of the National Land Code is a maximum period of 30 years." This was because the tenancy was over part of the premises. As a matter of principle this case is more in point.

It will be observed that in the first case, the appellant did not pay any tea-money or premium when he went into occupation of the premises, and in the second case, the appellant had expended money. In the present case, I have found that the plaintiffs did

receive tea-money and did give an undertaking to allow the defendants to rent the premises as long as the defendants wish. Then there is the 1967 agreement, the latest entered into by the parties. By paragraph 8 of the agreement the defendants are given the right to give a month's notice to terminate tenancy. Paragraph 9 reserves the right of the plaintiffs to take necessary action against the defendants for failure to observe any of the terms and conditions set out. It will be observed that the agreement is totally silent as to the right of the plaintiffs, as landlord, to terminate the tenancy by notice in any form. I find that this was intentional, because the plaintiffs were mindful of the tea-money that they had received. If it was contemplated to be an ordinary monthly tenancy with the right of either side to terminate the tenancy on giving a month's notice there would be words to that effect. Considering this, I am satisfied that it was intended that the tenancy was to operate as a lease for a term of years. In view of the differences between the parties, the court has to determine this term. The principle stated in *Inwards* v. *Baker*,[3] in my view, has application. This case was discussed in *Yong Tong Hong's* case, *supra*. The principle, if I may condense it, is that where a person has expended money on the land of another in the expectation, induced or encouraged by the owner, an equity was created such that the court would protect his occupation of the land and determine in what way the equity so arising could be satisfied. The principle in the form applicable to the present case may be rendered thus: if a landlord induces payment from a tenant of any tea-money or premium for occupation of his premises to be rented out, that tea-money or premium must be deemed to be a contribution to the cost of the premises to be rented out, an equity is created; and the court will treat the tea-money or premium as payment towards a lease for a term of years proportionate to the assessed value of the premises. Here, the defendants paid tea-money for occupation of the premises. The payment was induced and encouraged by the plaintiffs in that the defendants would be allowed to remain in occupation for so long as they desired on payment of monthly rent and on agreeing to the conditions imposed in the rent receipt and subsequently in the 1967 agreement. By this, I find that an equity has been created in that the defendants can continue to occupy the premises for a term of years to be determined, provided they observed the conditions. The differences between the parties which have resulted in the plaintiffs issuing the notice to terminate tenancy are merely on what should be the correct increase of rent in proportion to the increase in assessment. It is a matter for the court to determine the equity so created in terms of the years the lease to be granted and also, in view of the differences between the parties, the correct rent with the increase in assessment.

The value of the property has now been agreed upon to be at between $49,000 to $50,000 under leasehold for 99 years. The tenancy was for the whole premises and not part of the premises. *Yong Tong Hong's* case, *supra*, deals with part of the premises. There the Federal Court invoked section 221(3)(b) of the National Land Code. In the present case section 221(3)(b) applies. The period is therefore 99 years. For easy calculation, I would put the value of the property at $50,000 and the leasehold the plaintiffs have as 100 years. For $14,000 the period is therefore 28 years. Considering the equity that has been created and the differences between the parties over the correct rent, which can easily be remedied, I find that the notice by the plaintiffs terminating the tenancy to be of no effect.

I come now to the amount of monthly rent that should be paid with the proportionate increase of assessment. Now, there would have been no difficulty if the assessment rate in Johore was based on the annual value. This means the amount of annual rent which the property owner is likely to get if he rents out the property. For example if he gets $100 rent from a property, the annual value would be $1,200 and assessment would be based on this figure. In Johore, unlike other States, the assessment is based on the improved value of the property. The present rate of assessment, I believe, is about 1.5% on the improved value. Under paragraph 1 of the 1967 agreement the rent is stated to be $254 per mensem commencing from May 1, 1967. Paragraph 7 of the 1967 agreement speaks of increase in "assessment rate, quit rent and other taxes." The increase of rent should therefore be based on the percentage of increase in assessment, quit rent and other taxes. It has been shown that there has been an increase in assessment but not other taxes. In 1968 when the assessment was $349.70, the rent was $254 per mensem. In 1969 the assessment was $403.50. The increase was, therefore, $53.80. In terms of percentage the increase of rent is 15.38%, say 15.5%. The increase should therefore be based on this percentage. I do not think that the defendants are correct in saying that the increase to the annual rent should be the same figure as the increase in the assessment, as this would not be proportionate. Since the rent before the increase was $254 per mensem, 15.5% of this is $39.37. The correct monthly rent brought about by the increase in assessment is therefore $293.37, say $293.40.

Judgment is as follows:

Plaintiffs' claim is dismissed with costs. Defendants' counterclaim is allowed. I hereby order the plaintiffs to register a lease in favour of the defendants for 28 years from August 1, 1957 with the terms and conditions as in the 1967 agreement. This is subject to the defendants paying all arrears of the correct rent ($293.40) as indicated above caused by the increase in assessment within 2 months.

I order no costs in the defendants' counterclaim. I find the defendants have brought this action upon themselves. I feel that they have also contributed to the differences which have arisen.

Order accordingly.

Solicitors: *Hassan Yunos & Co.; Singham & Co.*